MONTANA LEGISLATIVE HISTORY

Chapter 167 19 93

Bill H 521 S _____ Original bill & history ✓ C

H. Committee on Human Ser.			S. Committee on Judiciary		
Hearing Date(s)	2-12	✓ C	Hearing Date(s)	3-10	✓ C
	2-15	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 521 INTRODUCED BY DAVIS

AMEND ELDERLY AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT TO INCLUDE SEXUAL ABUSE

2/08	INTRODUCED		
2/08	REFERRED TO HUMAN SERVICES & AGING		
2/08	FIRST READING		
2/12	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED	98	0
2/19	3RD READING PASSED	94	0
	TRANSMITTED TO SENATE		
2/22	FIRST READING		
2/22	REFERRED TO JUDICIARY		
3/10	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	48	0
3/13	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE		
3/16	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 167		
	EFFECTIVE DATE: 03/24/93		

HB 522 INTRODUCED BY SQUIRES, ET AL.

PROTECT STATE EMPLOYEES FROM PRIVATIZATION, REORGANIZATION, OR CLOSURE

2/08	INTRODUCED		
2/08	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/08	FIRST READING		
2/08	FISCAL NOTE REQUESTED		
2/13	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/18	HEARING		
2/19	REVISED FISCAL NOTE REQUESTED		
2/19	REREFERRED TO APPROPRIATIONS		
3/02	REVISED FISCAL NOTE RECEIVED		
3/03	REVISED FISCAL NOTE PRINTED		
3/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	88	9
3/24	3RD READING PASSED	85	15
	TRANSMITTED TO SENATE		
3/26	FIRST READING		
3/26	REFERRED TO FINANCE & CLAIMS		
4/03	HEARING		
4/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/14	2ND READING CONCURRED	48	0
4/15	3RD READING CONCURRED	43	5
	RETURNED TO HOUSE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS CONCURRED	82	17
4/19	3RD READING AMENDMENTS CONCURRED	77	20
4/20	SIGNED BY SPEAKER		
4/20	SIGNED BY PRESIDENT		
4/21	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 477		
	EFFECTIVE DATE: 04/22/93		

House BILL NO. 521

INTRODUCED BY Davis

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT TO INCLUDE REFERENCES TO SEXUAL ABUSE; AMENDING SECTIONS 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812, 52-3-813, 52-3-815, AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 52-3-802, MCA, is amended to read:

"**52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's elderly and developmentally disabled persons through the identification and reporting of acts of such abuse, sexual abuse, neglect, and exploitation."

Section 2. Section 52-3-803, MCA, is amended to read:

"**52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, ~~his~~ the person's money, or ~~his~~ the person's property to the advantage of another by means of duress, menace, fraud, or undue influence.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare to provide food,

shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to ~~protect--himself~~ provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 3. Section 52-3-804, MCA, is amended to read:

"**52-3-804. Duties of department of family services.** (1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or under Title 52, chapter 4, part 1, for a person alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or ~~his~~ the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding there is probable cause to believe the person is abused, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to be abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317."

Section 4. Section 52-3-805, MCA, is amended to read:

"**52-3-805. Adult protective service teams.** The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or ~~his~~ the department's designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or ~~his~~ the county attorney's designee, who

is an attorney."

Section 5. Section 52-3-811, MCA, is amended to read:

"**52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, sexual abuse, ~~exploitation, or~~ neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, ~~exploitation, or~~ neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the department of

family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, sexual abuse, ~~exploitation,~~ or neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a

roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless he the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1)."

Section 6. Section 52-3-812, MCA, is amended to read:

"52-3-812. Content of report. (1) The report required by 52-3-811 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

(2) The report referred to under this section shall contain:

(a) the names and addresses of the older person or the developmentally disabled person and the person, if any, responsible for his the person's care;

(b) the name and address, if available, of the person who is alleged to have abused, sexually abused, neglected, or exploited the older person or the developmentally disabled person;

(c) to the extent known, the person's age and the nature and extent of the abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries

sustained by the older person or the developmentally disabled person; and

(d) the name and address of the person making the report."

Section 7. Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 ~~shall~~ must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who ~~has in his care~~ is caring for an older person or a developmentally disabled person who he the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being

abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, ~~exploitation, or~~ neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, ~~exploitation, or~~ neglect, or exploitation and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher; and

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) ~~shall~~ must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the

report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a developmentally disabled person is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 8. Section 52-3-815, MCA, is amended to read:

"52-3-815. Evidence of abuse, sexual abuse, or neglect to be gathered and submitted. (1) A person or agency receiving a report of suspected abuse, sexual abuse, or neglect under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, or neglect and may, with the consent of an allegedly abused, sexually abused, or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, or neglected person and regarded as evidence of abuse, sexual abuse, or neglect.

(2) A physician required to report under 52-3-811 may,

with the consent of an allegedly abused, sexually abused, or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, or neglect.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."

Section 9. Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, sexually abuses, neglects, or exploits an older person or a developmentally disabled person is guilty of an offense and upon a first conviction may be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10

years and may be fined an amount not to exceed $10,000, or both."

NEW SECTION. **Section 10.** **Effective date.** [This act] is effective on passage and approval.

-End-

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0391	GERVAIS, FLOYD 1/30	2/08	CLARIFY THAT PL 93-638 FUNDS ARE NOT INCOME FOR ASSISTANCE PURPOSES	TABLED ON 02/10 VOTE: 16-0		
HB0489	JOHNSON, ROYAL 2/05	2/10	CLARIFY DO NOT RESUSCITATE IDENTIFICATION LAW	PASS AS AMENDED 2/12 VOTE: 16-0		2/15
HB0491	SIMON, BRUCE 2/05	2/10	REVISE DEATH CERTIFICATE PROCEDURE	PASS AS AMENDED 2/12 VOTE: 16-0		2/15
HB0492	DOWELL, TIM 2/05	2/15	AUTHORIZE HEALTH START PILOT PROGRAM	PASS AS AMENDED 2/17 VOTE: 12-0	APPROPRIATIONS	2/18
HB0497	SMITH, LIZ 2/05	2/10	2/12 CLARIFY DFS FINANCIAL RESPONSIBILITY FOR PROTECTIVE SERVICES COSTS	PASS AS AMENDED FAILED VOTE: 7-9		
HB0508	FAGG, RUSSELL 2/08	3/24	AMENDED INTO SB 285 CREATE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT	VOTE:		
HB0521	DAVIS, ERVIN 2/08	2/12	AMEND ELDERLY ABUSE PREVENTION ACT TO INCLUDE SEXUAL ABUSE	DO PASS 2/15 VOTE: 16-0		2/16
HB0544	SMITH, LIZ 2/09	2/12	REVISE ELDER PROTECTION LAW	DO PASS 2/15 VOTE: 16-0		2/16
HB0560	SIMPKINS, RICHARD 2/10	2/15	CHANGE REPORTING REQUIREMENTS FOR AIDS, HIV-RELATED ILLNESS, HIV INFECTION	TABLED ON 2/17 VOTE: 13-3		
HB0581	RICE, SHEILA 2/10	2/15	CREATE A STATE HOUSING TASK FORCE	PASS AS AMENDED 2/17 VOTE: 12-0		2/18

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **VICE CHAIRMAN BRUCE SIMON**, on February 12, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Bill Boharski, Chairman (R)
Rep. Bruce Simon, Vice Chairman (R)
Rep. Stella Jean Hansen, Vice Chairman (D)
Rep. Beverly Barnhart (D)
Rep. Ellen Bergman (R)
Rep. John Bohlinger (R)
Rep. Tim Dowell (D)
Rep. Duane Grimes (R)
Rep. Brad Molnar (R)
Rep. Tom Nelson (R)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)

Members Excused: Rep. Sheila Rice, Rep. Angela Russell, Rep. Carolyn Squires, Rep. Bill Strizich

Members Absent:

Staff Present: David Niss, Legislative Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 521, HB 544
Executive Action: HB 497, HB 491, HB 489, HB 135 (HB 135 to be continued 2-15-93)

HEARING ON HB 521

Opening Statement by Sponsor:

REP. ERVIN DAVIS, House District 53, Charlo, said Paula Gill would explain the technicalities of HB 521. He reserved the right to close.

Proponents' Testimony:

Paula Gill, Deputy Sheriff, Lake County Sheriffs Department, Polson, distributed field notes taken on the case of a nineteen year old, developmentally disabled female adult, who was living in a home where she was being sexually molested by her father. **EXHIBIT 1. Ms. Gill** said upon inquiry, she discovered that there is no law that would allow the Department of Family Services (DFS) to remove the nineteen year old adult from the home. The law states that DFS may arrange an appropriate emergency protective service placement if a developmentally disabled person alleged to be abused or neglected, is suffering from abuse or neglect, that presents a substantial risk of death or serious physical injury. Abuse is defined as infliction of physical or mental injury, or deprivation of food, shelter, clothing, or services needed to maintain physical/mental health. Mental injury is defined as substantial impairment of an older person's intellectual or psychological functioning or well-being; neglect or failure to provide food, shelter, clothing, or services. The law does not address the removal of a developmentally disabled person for sexual assault. HB 521 will resolve that issue.

Tom Harrison, Montana Sheriffs and Peace Officers Association, (MSPOA). MSPOA supports HB 521.

Harley Warner, Montana Association of Churches (MAC). MAC supports HB 521.

Sharon Hoff, Montana Catholic Conference (MCC). MCC supports HB 521.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

REP. DOWELL asked **Paula Gill** if there was suspicion or proof of abuse why couldn't the situation of the nineteen year old developmentally disabled adult be resolved under current laws. **Ms. Gill** said it would have to be proved that the father had actually sexually assaulted the nineteen year old. The County Attorney questioned whether a developmentally disabled person could testify in court against her father or whether her statement could be used in court. **REP. DOWELL** asked **Ms. Gill** what would happen if the state granted authority to have the nineteen year old removed from the home and in reality there wasn't a problem. **Ms. Gill** said it would be more important to get the nineteen year old out of the home and continue the investigation.

REP. SIMON told **Ann Gilkey, Department of Family Services (DFS)** he is concerned about the training level of DFS personnel and their ability to deal with criminal matters such as the one described by **Ms. Gill.** Determining whether there is evidence to substantiate a crime is clearly a law enforcement type of action. **Ms. Gilkey** said last session the department received legislation that allowed for emergency removal of certain individuals who are abused or neglected in this type of situation, if the neglect or abuse presents a substantial risk of death or serious physical injury. The sexual abuse would have to fall under risk of death or serious physical injury to remove the person from the home. She said she didn't think the legislation would take care of the problem. The department is training personnel to be more sensitive to sexual abuse issues. **REP. SIMON** said sensitivity to an issue and being trained to deal with law enforcement issues are somewhat different.

REP SIMON asked **Tom Harrison** to comment on the issue discussed with **Ms. Gilkey. Mr. Harrison** said the bill has been expanded to include the phrase sexual abuse. The intent of the bill is to allow a sexually abused developmentally disabled person to be removed from the environment. Whether there is a crime is of no concern. If a crime had been committed and the County Attorney could prove it, the bill wouldn't be needed.

Closing by Sponsor:

REP. DAVIS said HB 521 plugs the loophole where there is sexual abuse and allows the removal of the victim from that environment. **REP. DAVIS** asked the committee to give HB 521 a Do Pass recommendation.

HEARING ON HB 544

Opening Statement by Sponsor:

REP. LIZ SMITH, House District 48, Deer Lodge, said there has been an increase of displaced elderly in Montana. HB 544 provides for the protection of aged persons whose health or welfare is, or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. This bill increases the responsibility of the Department of Family Services for the protection of the elderly in Montana.

Proponents' Testimony:

Clyde Dailey, Executive Director, Montana Senior Citizens Association, said elder abuse is on the rise. Sometimes the community is more aware of the conditions of the elderly than their children. This bill provides the mechanism for the Department of Family Services to take the necessary steps to

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL DATE 2-12-93

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL BOHARSKI, CHAIRMAN	✓		
REP. BRUCE SIMON, VICE CHAIRMAN	✓		
REP. STELLA JEAN HANSEN,V. CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. TIM DOWELL	✓		
REP. DUANE GRIMES	✓		
REP. BRAD MOLNAR	✓		
REP. TOM NELSON	✓		
REP. SHEILA RICE			✓
REP. ANGELA RUSSELL			✓
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. CAROLYN SQUIRES			✓
REP. BILL STRIZICH			✓

EXHIBIT 1
DATE 2-12-93
HB 521

Late 1991 contacted by 26 yr. old reporting she'd been a victim of incest, her father being the offender from the time she was in Kindergarten until she was 17 and moved away from home

26 yr. old knew that the statute of limitations had run out on the assaults that had occurred against her, but wanted r/o to check on the welfare of her developmentally disabled sister, who was 19, and still living with her father and mother

She also advised that her father had admitted during the previous summer that he'd molested her, and her mother was aware of the problem Her father had said he'd go into treatment, but hadn't

R/O contacted the 19 yr. old developmentally disabled sister, and she told r/o that she'd been abused, a victim of incest also, and that the latest assault had occurred in the fall of 1991 this would have been after the father had admitted to being an offender

R/O contacted the mother and advised that 19 yr. old should be moved. Contacted DFS and Co. atty. thinking there would be a statute that would allow for emerg. removal of the young woman.

Code 52-3----804 part 5 if a representative of the department of family services has reasonable grounds to believe that an older or devel. mentally disabled person alleged to be abused or neglected is suffering from abuse or neglect that presents a substantial risk of death or serious phys. injury, the department may, under part i arrange or facilitate an appropriate emer. protective service placement

Co. Atty. and DFS social worker upon advise of DFS atty. in Helena said the statute doesn't cover a victim of incest

The problem was in the definitions of words in the statute. Abuse is defined as infliction of phys or mental inj or deprivation of food shelter clothing or services needed to maintain phys/mental health

mental inj was defined as substantial impairment of an older person's intellectual or psychological functioning or well-being(Nothing being stated about a dev. disabled adult)

neglect-failure to provide food shelter clothing or services

No where was it mentioned that a dev. dis. person could be removed for the reason of sexual assault

The mother in the case said she'd move out of the house within 2 weeks and r/o had to hope she would

Later r/o interviewed the offender and he admitted to recent assaults on his daughter, and she confirmed this. It was not probable that r/o could obtain an arrest warrant for the suspect,

due the fact that his daughter was dev. dis. made her an unlikely witness for trial.

The mother finally moved out of the house/with her daughter 8 months after the first disclosure by the older sister

It is unknown how many times the young woman was abused in these 8 months.

Therefore I'm a proponent for HB 521.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Human Services COMMITTEE BILL NO. HB 521

DATE 2/12/93 SPONSOR(S) Rep. Davis

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
HARLEY WARNER	ASSOC OF CHURCHES	X	
SHARON HOFF	MT CATH CONF	X	
TOM HARRISON	MT Sheriffs + Peace Off	X	
P Gill	LAKE CO	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **CHAIRMAN BILL BOHARSKI**, on February 15, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Bill Boharski, Chairman (R)
Rep. Bruce Simon, Vice Chair (R)
Rep. Stella Jean Hansen, Vice Chairman (D)
Rep. Beverly Barnhart (D)
Rep. Ellen Bergman (R)
Rep. John Bohlinger (R)
Rep. Tim Dowell (D)
Rep. Duane Grimes (R)
Rep. Brad Molnar (R)
Rep. Tom Nelson (R)
Rep. Sheila Rice (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Carolyn Squires (D)
Rep. Bill Strizich (D)

Members Excused: Rep. Russell

Members Absent:

Staff Present: David Niss, Legislative Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HJR 15, HB 560, HB 581, HB 492
Executive Action: HJR 7, HB 544, HB 521, HB 75

HEARING ON HJR 15

Opening Statement by Sponsor:

REP. FRANCIS BARDANOUVE, House District 16, Harlem, said HJR 15 urges the Clinton Administration and Congress to grant the waiver of federal requirements regarding Medicaid in order for the Oregon health plan to take effect.

Services would hurt the child care community system. **Ms. McGuire** said if the child care development block grant is taken away from DFS, the economically disadvantaged will no longer have access to those services. The Governor's Child Care Advisory Council is opposed to the bill 9 to 1.

REP. HANSEN said the Department of Family Services was created because children and family issues were not addressed in Social and Rehabilitation Services.

CHAIRMAN BOHARSKI asked **Boyce Fowler** what is funded by the block grant. **Mr. Fowler** said 75% goes to children's services, which is for payment of direct day care services; most of the remaining 25% funds resource and referral. **CHAIRMAN BOHARSKI** asked **Mr. Fowler** if any block grant money was used for licensing and registration. **Mr. Fowler** said the only part that goes into licensing is for training DFS staff.

Motion/Vote: **REP. BOHLINGER MOVED HB 135 DO PASS AS AMENDED.** Roll call vote was taken. **EXHIBIT 13.** Motion FAILED. Tie vote 8 to 8.

EXECUTIVE ACTION ON HB 544

Motion: **REP. SMITH MOVED HB 544 DO PASS.**

Motion: **REP. MOLNAR** moved to amend HB 544 by striking "or may be" on page 2, line 6 and replace with "is."

Discussion:

REP. SIMON said he intended to vote against **REP. MOLNAR'S** motion because there are many instances where a person's health or welfare is being threatened and if nothing is done, it could affect that person's health or welfare in the future.

Vote: Voice vote was taken. Motion FAILED 2 to 14.

Vote: **HB 544 DO PASS.** Voice vote was taken. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 521

Motion/Vote : **REP. DOWELL MOVED HB 521 DO PASS.** Voice vote was taken. Motion CARRIED unanimously.

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL **DATE** 2-15-93

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL BOHARSKI, CHAIRMAN	✓		
REP. BRUCE SIMON, VICE CHAIRMAN	✓		
REP. STELLA JEAN HANSEN,V. CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. TIM DOWELL	✓		
REP. DUANE GRIMES	✓		
REP. BRAD MOLNAR	✓		
REP. TOM NELSON	✓		
REP. SHEILA RICE	✓		
REP. ANGELA RUSSELL			✓
REP. TIM SAYLES	✓		
REP. LIZ SMITH			
REP. CAROLYN SQUIRES	✓		
REP. BILL STRIZICH	✓		

HOUSE STANDING COMMITTEE REPORT

February 16, 1993

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 521 (first reading copy -- white) do pass .

Signed: Wm E Boharski

Bill Boharski, Chair

Committee Vote:
Yes 4, No 0.

380953SC.Hss

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0507	SAYLES, TIM 3/01	3/23	CREATE OFFENSE OF ASSAULT ON A SPORTS OFFICIAL	CONCUR AS AMENDED 3-23		3/24
HB0521	DAVIS, ERVIN 2/22	3/10	AMEND ELDERLY ABUSE PREVENTION ACT TO INCLUDE SEXUAL ABUSE	CONCUR 3-10		3/11
HB0525	RICE, JIM 3/12	3/22	CREATING THE COMMISSION ON JUDICIAL ORGANIZATION & FINANCE; DUTIES; FUNDING	CONCUR AS AMENDED 3-26		3/29
HB0555	PAVLOVICH, BOB 3/01	3/08	REVISE CLERK OF DISTRICT COURT FEES	CONCUR AS AMENDED 3-10	TAXATION	3/12
HB0559	ANDERSON, SHIELL 3/01	3/11	PAY STATE BAR ADMISSION FEE DIRECTLY TO STATE BAR, NOT TO SUPREME COURT	CONCUR 3-11	TAXATION	3/12
HB0561	BROWN, DAVE 3/01	3/12	AMEND HUMAN RIGHTS ACT TO INCLUDE AGENT IN EMPLOYER DEFINITION	CONCUR 3-12		3/12
HB0562	RICE, JIM 3/01	3/10	PROHIBIT SEXUAL EXPLOITATION OF CHILDREN	CONCUR AS AMENDED 3-23		3/24
HB0570	GRINDE, LARRY HAL 3/26	4/06	ASSESSMENT OF GOVERNMENTAL ACTION IMPACTING PRIVATE PROPERTY	TABLED ON 04/13		
HB0573	KADAS, MIKE 3/01	3/10	REVISE LANDLORD TENANT LAWS	CONCUR 3-15		3/15
HB0574	RICE, JIM 3/12	3/24	CONTINUE APPELLATE DEFENDER SYSTEM	CONCUR 3-24		3/24
HB0576	ENDY, WILLIAM 3/19	3/25	CONST. AMEND TO EXTEND RIGHT TO BEAR ARMS TO LAWFUL HUNTING & RECREATION USE 4/13	TABLED ON 03/29		
HB0582	BROWN, DAVE 3/01	3/05	REVISE CONCEALED WEAPONS PERMIT LAW	TABLED ON 03/08		

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 10, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Brown, Sen. Crippen, Sen. Harp

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 562
	HB 573
	HB 521
Executive Action:	HB 521
	HB 555
	HB 234

HEARING ON HB 573

Opening Statement by Sponsor:
Representative Kadas, District 55, said HB 573 was worked out between the Montana Peoples Action and the Montana Landlords Association regarding tenant landlord relations. Section 1 defines case of emergency. Section 2 changes the requirement

mailing. Ms. Case said certified mail was the intention, not certificate of mailing.

Senator Bartlett asked Ms. Case if certificate of mailing should be struck and insert certified return receipt. Ms. Case said yes.

Chair Yellowtail said HB 573 replaces the old language that said registered mail with this new term certificate of mailing. Mr. Van Horssen said certified mailing is something that happens through the postal service and the postal service keeps track of those records. Mr. Van Horssen suggested that the language, certificate of mailing, offers the landlord or tenant an opportunity to circumvent the certified mailing requirement by signing a document stating that they personally sent the notice on a particular date to a particular person.

Closing by Sponsor:
Representative Kadas closed. Rep. Kadas told the Committee he would look into the issue of the certificate of mailing if the Committee so desired.

HEARING ON HB 521

Opening Statement by Sponsor:
Representative Davis, District 53, said HB 521 is a simple bill. Rep. Davis said HB 521 inserts the word "sexual." Rep. Davis said sexual abuse is defined on page 3, line 14, sub 10. "Sexual abuse means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5." Rep. Davis told the Committee the reason for HB 521 is because of a case of a 19 year old who was being sexually abused by her father. The mother brought it to court, but was unable to remove the woman from the situation because she was an adult. Thus, this is the reason for clarifying HB 521 to include sexual abuse.

Proponents' Testimony:
Tom Harrison, Montana Sheriffs and Peace Officers Association, said circumstances that lead to HB 521 are precisely as Rep. Davis indicated. A developmentally disabled adult living in the home was being sexually abused by her father. Because she was an adult there were no grounds for the separation of that person from those circumstances. Fortunately, the situation resolved itself with the mother leaving that home with the daughter. The Department of Social and Rehabilitation Services and the County Attorneys both recommend the change in HB 521. Mr. Harrison urged support for HB 521.

Harley Warner, Montana Association of Churches urged support for HB 521.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Grosfield asked John Conner, Montana County Attorney's Association, why sexual abuse should be defined. Mr. Connor said abuse, as it is now defined in the law, does not include sexual abuse, therefore sexual abuse needs to be defined.

Closing by Sponsor:
Representative Davis closed.

EXECUTIVE ACTION ON HB 521

Motion/Vote:
Senator Blaylock moved HB 521 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 234

Motion/Vote:
Senator Blaylock moved HB 234 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

HEARING ON HB 562

Opening Statement by Sponsor:
Representative Jim Rice, District 43, said HB 562 would expand the crime of sexual abuse of children to include possession of child pornography by making the act a misdemeanor and expands the definition of child pornography. Rep. Rice told the Committee about a group called Enough is Enough. Enough is Enough is an organization of women whose goal is to enact legislation making it illegal in all 50 states to possess child pornography. Montana is one of seven states that does not include the possession of child pornography as a crime. Rep. Rice said HB 562 would assist prosecutors to be able to introduce the crime into evidence for prosecution. Rep. Rice said allowing possession of child pornography to be a crime, prosecutors can charge the person with possession and allows them to introduce the evidence seized in the case. This would give prosecutors an opportunity to have better cases against those accused of child molesting. HB 562 expands the definition from sexual contact to sexual conduct. Rep. Rice said if it is a crime to possess child pornography it would enable law enforcement the ability to seize that and take them out of circulation. Rep. Rice submitted a

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-10-98

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown			X
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 10, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 521 (first reading copy -- blue), respectfully report that House Bill No. 521 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

m Amd. Coord.
m Sec. of Senate

Franklin
Senator Carrying Bill

541156SC.Sma